

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PATRICK N. KOCHER  
and KIMBERLY A. MUDAR

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Appeal No. 2003-1394  
Application 09/620,202

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ON BRIEF

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Before STAAB, MCQUADE, and BAHR, Administrative Patent Judges.  
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Patrick N. Kocher et al. appeal from the final rejection of claims 20 and 22 through 24, all of the claims pending in the application.

THE INVENTION

The invention relates to a method for packaging a product.  
Representative claim 20 reads as follows:

20. A method of packaging a product comprising:  
a) providing a product support member having  
    i) a cavity formed therein, and  
    ii) a flange around the perimeter of the member;

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- b) placing the product in the cavity formed by the product support member;
- c) placing an oriented, heat shrinkable film over the product;
- d) sealing the oriented, heat shrinkable film to the flange of the product support member;
- e) cutting at least some of the oriented, heat shrinkable film at a location beyond the perimeter of the product support member,
- f) shrinking the oriented, heat shrinkable film extending beyond the perimeter of the product support member such that the oriented, heat shrinkable film shrinks back to the flange and forms a bead thereon.

#### THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Stewart	4,867,336	Sep. 19, 1989
Bakker et al. (Bakker)	5,249,410	Oct. 5, 1993
Walton et al. (Walton)	5,562,958	Oct. 8, 1996

#### THE REJECTIONS

Claims 20, 22 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bakker in view of Stewart.

Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bakker in view of Stewart and Walton.

Attention is directed to the brief (Paper No. 14) and answer (Paper No. 15) for the respective positions of the appellants and examiner regarding the merits of these rejections.

DISCUSSION

Bakker, the examiner's primary reference, discloses a product packaging method comprising the steps of providing a product support member in the form of an open-top container 12 having a cavity and a flange (see Figures 2 and 3), placing a food or drink product such as a soft drink 128 in the container, placing an oriented, heat shrinkable film 26 over the product (see Figure 5), cutting the film at a location beyond the perimeter of the container with a heated cutting means 94 (see column 5, lines 2 through 7), sealing the film to the flange of the container (see column 5, lines 22 through 26), and shrinking the film across the top of the container (see column 5, lines 40 through 48). As conceded by the examiner (see page 3 in the answer), this method does not meet the limitation in claim 20 requiring the step of "shrinking the oriented, heat shrinkable film extending beyond the perimeter of the product support member such that the oriented, heat shrinkable film shrinks back to the flange and forms a bead thereon." To overcome this deficiency, the examiner turns to Stewart.

Stewart discloses a process for sealing a lid to a container by dielectric heating. The container 20 and lid 21 are structures made by "thermoforming, vacuum forming or solid phase

forming from sheet[s] or billets" (column 4 lines 60 and 61). Both include respective thermoplastic layers 24 which can be heated and pressed into sealing contact by RF electrodes 31. The lid further includes an overhang 26 "which serves as a convenient place to grip and apply force to peel the lid off" (column 5, lines 18 and 19). The overhang can also function, after the lid has been peeled off and inverted, to mechanically reseal the lid to the container (see column 5, lines 46 through 58).

In proposing to combine Bakker and Stewart to reject independent claim 20, the examiner likens Stewart's overhang 26 to a bead and concludes in light thereof that "[i]t would have been obvious to one skilled in the art to provide the Baker [sic, Bakker] container with . . . a bead to . . . more easily open the package" (answer, page 3).

Even if this combination were made, however, it still would not respond to the recitation in claim 20 that the bead be produced by shrinking the film such that it shrinks back to the flange and forms the bead thereon. Stewart contains no indication that the overhang/bead 26 is formed in this manner. To the contrary, Stewart fairly suggests that the overhang 26 is present on the thermoformed, vacuum formed or solid phase formed lid 21 prior to the time at which the lid is heat sealed to the

container 20. Moreover, after such heat sealing takes place, the bead lies offset from, rather than on, the flange of the container. Hence, even if the examiner's rather dubious conclusion that it would have been obvious to provide Bakker's heat shrinkable film with a bead in view of the overhang 26 on Stewart's dielectrically heat sealable lid is accepted at face value, there is nothing in the combined teachings of these references which would have further suggested forming such a bead on Bakker's film in the manner required by claim 20.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claim 20, and dependent claims 22 and 23, as being unpatentable over Bakker in view of Stewart.

As the examiner's application of Walton for its disclosure of a heat-shrinkable packaging film composed of peelable layers does not cure the foregoing shortcomings of the Bakker and Stewart combination relative to parent claim 20, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claim 24 as being unpatentable over Bakker in view of Stewart and Walton.

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SUMMARY

The decision of the examiner to reject claims 20 and 22  
through 24 is reversed.

REVERSED

LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	
	)	
	)	BOARD OF PATENT
	)	
	)	APPEALS AND
JOHN P. MCQUADE	)	
Administrative Patent Judge	)	INTERFERENCES
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JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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